In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 649

JOHN DWAIN DUGGER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Western District of Arkansas, petitioner and one Meyer were convicted on nine counts charging violation of the Dyer Act (18 U.S.C. 2312) and one count of conspiracy to commit that offense. They were sentenced to two years' imprisonment on each of the first five counts, the sentences to run consecutively, and to concurrent two-year prison terms on each of the remaining counts (*i.e.*, a total of ten years). The court of appeals affirmed (Pet. App. A1–A9). A motion for rehearing or rehearing en banc was denied on August 27, 1968. The petition for a writ of certiorari, filed on October 14, 1968, is out of time under Rule 22(2) of the Rules of this Court.

325-450—68

Moreover, there is no issue tendered which warrants review.

1. The evidence, which is summarized in the opinion below (Pet. App. A2–A8), showed a scheme whereby defendants obtained titles to automobiles and altered the serial numbers on stolen automobiles to conform to those titles. They then transported at least nine such stolen automobiles from Missouri to Arkansas, where they sold them to used car dealers. Petitioner contends that the government's proof was insufficient to identify the cars they transported interstate and sold as the stolen cars listed in the indictment. The court of appeals thoroughly considered this claim, which it found to be refuted principally by evidence showing restoration by the F.B.I. of the true identification numbers of the vehicles transported by petitioner and his codefendant (which numbers had been ground off), thus identifying them as the vehicles specified as stolen in the indictment (Pet. App. A2–A7).[1] The record fully supports this finding. See, *e.g.*, the prosecutor's summary of the evidence at pages 328–339 of the record transcript.[2]

2. Petitioner's other contention is that the trial judge erred in failing to grant defendants' motion for discovery and inspection of certain papers seized by the government at codefendant Meyer's garage. The papers, seized pursuant to a search warrant, in-

[1] The owner of one of the stolen automobiles also testified as to its identity, based on a scratch on the glove compartment which he recognized and a hide-a-key box within the car containing his extra car and house keys (Pet. App. A3).

[2] We are lodging a copy of that transcript with the Clerk of this Court.

cluded checks, bank records and retail automobile orders. Meyer testified that they were essential to his defense (see Rule 16(b), F.R. Crim. P., set forth at Pet. 3), while an F.B.I. agent testified that they were of no relevance to the transactions charged (Pet. 6). As the court of appeals held, the trial judge did not abuse his discretion in denying the motion in the circumstances of this case. Meyer testified that he always paid cash for cars, so it is difficult to appreciate how his cancelled checks would have been of value in defendants' preparation of their case. Moreover, as the court of appeals pointed out (Pet. App. A8–A9), the government did furnish the defense (in response to a motion for bill of particulars) with an F.B.I. work sheet containing information about thirty-nine automobiles alleged to have been transported by them, including those that were the subject of the indictment. The information listed in the work sheet (see Pet. App. A8–A9) "amply sufficed to permit defendants to adequately prepare for trial" (*id.* at A9).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1968.

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